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**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

D&D GROUP PTY LTD, an Australian  
 corporation, D & D TECHNOLOGIES  
 PTY LTD, an Australian corporation  
 and D & D TECHNOLOGIES (USA),  
 INC. a California corporation,

Plaintiff,

v.

Nationwide Industries, Inc., a Florida  
 corporation,

Defendant.

And Related Counterclaims

CASE NO. 08CV-0236 WQH POR

Assigned to The Hon. William Q.  
 Hayes

Complaint Filed: February 6, 2008

Plaintiff and Counterdefendant D&D  
 Group Pty Ltd's Reply to Defendant's  
 Counterclaims and Jury Demand

Plaintiff and Counterdefendant D&D Group Pty Ltd (hereinafter "D&D  
 Group" or "Counterdefendant"), by and through its undersigned counsel, as and for  
 its Reply in response to the Counterclaims asserted against it by Defendant and  
 Counterclaimant Nationwide Industries, Inc. (hereinafter "Nationwide" or  
 "Counterclaimant") in the above-captioned action, responds as follows:

**I. COUNTERCLAIMS**

1. Upon information and belief, D&D Group admits the allegations  
 contained in Paragraph 26 of the Counterclaims.

1           2.     D&D Group admits the allegations contained in Paragraphs 27-30 of  
2 the Counterclaims.

3                   **FIRST COUNTERCLAIM: DECLARATORY JUDGMENT OF**  
4                   **PATENT INVALIDITY AND NON-INFRINGEMENT**  
5

6           3.     In response to Paragraph 31 of the Counterclaims, D&D Group repeats  
7 and realleges each and every averment contained in its Complaint and repeats and  
8 realleges each an every response as set forth in Paragraphs 1 through 2 of D&D  
9 Group's Reply to the Counterclaims as set forth herein.

10          4.     In response to Paragraph 32 of the Counterclaims, D&D Group admits  
11 that Nationwide claims it has stated a claim for Declaratory Judgment that arises  
12 under the Patent Laws of the United States. D&D Group denies each and every  
13 remaining allegation as set forth in Paragraph 32 of Defendant's Counterclaims.

14          5.     D&D Group admits the allegations contained in Paragraphs 33-35 of  
15 the Counterclaims.

16          6.     In response to Paragraph 36 of the Counterclaims, D&D Group admits  
17 the allegations contained in Paragraph 36 of the Counterclaims.

18          7.     D&D Group denies each and every allegation set forth in Paragraphs 37  
19 and 38 of the Counterclaims.

20                   **SECOND COUNTERCLAIM: UNFAIR COMPETITION AND**  
21                   **FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)(1)(B)**  
22

23          8.     In response to Paragraph 39 of the Counterclaims, D&D Group repeats  
24 and realleges each and every averment contained in its Complaint and repeats and  
25 realleges each an every response as set forth in Paragraphs 1 through 7 of D&D  
26 Group's Reply to the Counterclaims as set forth herein.

27          9.     In response to Paragraph 40 of the Counterclaims, Plaintiff D&D  
28 Group admits that Nationwide claims to have stated a claim for unfair competition

1 and false advertising, which arise under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*  
2 D&D Group denies each and every remaining allegation as set forth in Paragraph 40  
3 of the Counterclaims.

4 10. D&D Group admits the allegations contained in Paragraphs 41-42 of  
5 the Counterclaims.

6 11. In response to Paragraph 43 of the Counterclaims, D&D Group admits  
7 that Nationwide has attached Exhibits 1, 2, 3, 4, and 5 to the Counterclaims, which  
8 purport to be advertising and promotional materials. D&D Group denies each and  
9 every remaining allegation of Paragraph 43 of the Counterclaims.

10 12. D&D Group denies each and every allegation set forth in Paragraphs  
11 44 and 45 of the Counterclaims.

12 13. In response to Paragraph 46 of the Counterclaims, D&D Group denies  
13 that the Advertising Materials attached to Counterclaimant Nationwide's  
14 Counterclaim were created or disseminated by D&D Group and, further denies each  
15 and every remaining allegation in said Paragraph.

16 14. D&D Group denies each and every allegation set forth in Paragraphs  
17 47, 48, 49 and 50 of the Counterclaims.

18 **THIRD COUNTERCLAIM:**

19 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**

20 15. In response to Paragraph 51 of the Counterclaims, D&D Group repeats  
21 and realleges each and every averment contained in its Complaint and repeats and  
22 realleges each and every response as set forth in Paragraphs 1 through 14 of D&D  
23 Group's Reply to the Counterclaims as set forth herein.

24 16. In response to Paragraph 52 of the Counterclaims, D&D Group admits  
25 that Nationwide claims to have stated a claim for unfair competition under the  
26 California Business and Professions Code § 17200. D&D Group denies each and  
27 every remaining allegation set forth in Paragraph 52 of the Counterclaims.

28 17. D&D Group admits the allegations contained in Paragraphs 53-54 of

1 the Counterclaims.

2 18. In response to Paragraphs 55-56 of the Counterclaims, D&D Group  
3 denies that the Advertising Materials attached to Counterclaimant Nationwide's  
4 Counterclaim were created or disseminated by D&D Group and, further denies each  
5 and every remaining allegation made against Plaintiff D&D Group in Paragraphs  
6 55-56.

7 **FOURTH COUNTERCLAIM:**

8 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 et seq.**

9 19. In response to Paragraph 57 of the Counterclaims, D&D Group repeats  
10 and realleges each and every averment contained in its Complaint and repeats and  
11 realleges each an every response as set forth in Paragraphs 1 through 18 of D&D  
12 Group's Reply to the Counterclaims as set forth herein.

13 20. In response to Paragraph 58 of Defendant's Counterclaims, D&D  
14 Group admits that Nationwide claims it has stated a claim for false advertising under  
15 the California Business and Professions Code § 17500 and 17508(a). D&D Group  
16 denies each and every remaining allegation as set forth in Paragraph 58 of  
17 Nationwide's Counterclaims.

18 21. D&D Group admits the allegations contained in Paragraphs 59-60 of  
19 the Counterclaims.

20 22. In response to Paragraph 61 of the Counterclaims, D&D Group denies  
21 that the Advertising Materials attached to Counterclaimant Nationwide's  
22 Counterclaim were created or disseminated by Plaintiff D&D Group and, further  
23 denies each and every remaining allegation made against Plaintiff D&D Group in  
24 Paragraph 61.

25  
26 **FIFTH COUNTERCLAIM: TRADE LIBEL**

27 23. In response to Paragraph 62 of the Counterclaims, D&D Group repeats  
28 and realleges each and every averment contained in its Complaint and repeats and

1 realleges each and every response as set forth in Paragraphs 1 through 22 of D&D  
2 Group's Reply to the Counterclaims as set forth herein.

3 24. In response to Paragraph 63 of the Counterclaims, D&D Group admits  
4 that Nationwide claims it has stated a claim for the common law tort of trade libel.  
5 D&D Group denies each and every remaining allegation as set forth in Paragraph 63  
6 of the Counterclaims.

7 25. D&D Group admits the allegations contained in Paragraphs 64-65 of  
8 the Counterclaims.

9 26. In response to Paragraphs 66-68 of the Counterclaims, D&D Group  
10 denies that the Advertising Materials attached to Counterclaimant Nationwide's  
11 Counterclaim were created or disseminated by Plaintiff D&D Group and, further  
12 denies each and every remaining allegation made against D&D Group in Paragraphs  
13 66-68.

14 27. To the extent that an allegation or legal conclusion in Defendant's  
15 Counterclaims was not specifically admitted or denied, D&D Group hereby denies  
16 such allegations and legal conclusions.

## 17 **II. AFFIRMATIVE DEFENSES**

### 18 **FIRST AFFIRMATIVE DEFENSE**

19 28. Nationwide Counterclaims fail to state any claims against D&D Group  
20 on which relief may be granted.

### 21 **SECOND AFFIRMATIVE DEFENSE**

22 29. The '100 patent is not invalid or unenforceable under any of the U.S.  
23 Patent laws.

### 24 **THIRD AFFIRMATIVE DEFENSE**

25 30. Defendant's Second, Third, Fourth, and Fifth Counterclaims fail  
26 because D&D Group never created or disseminated the advertisements attached to  
27 Nationwide's Counterclaim, and because said advertisements are truthful.  
28

**FOURTH AFFIRMATIVE DEFENSE**

31. Defendant's Second, Third, Fourth, and Fifth Counterclaims fail because D&D Group never created or disseminated the advertisements attached to Nationwide's Counterclaim, and because said advertisements contain lawful puffery.

**III PRAYER FOR RELIEF**

WHEREFORE, given the aforementioned response to Nationwide's Counterclaims, D&D Group respectfully requests that this Court grant D&D Group the following relief:

- A. That Nationwide's Counterclaims be dismissed with prejudice;
- B. That judgment be entered against Nationwide on all claims and causes of action at issue in the Nationwide's Counterclaims;
- C. That Nationwide be denied its Prayer for dismissal of Plaintiff's Complaint;
- D. That Plaintiff's U.S. Patent No. 5,584,100 be found valid and enforceable;
- E. That Nationwide be found to have infringed U.S. Patent No. 5,584,100;
- F. That this case be found not to be exceptional with respect to Nationwide's Counterclaims and Prayer for Relief;
- G. That Nationwide be denied all injunctive and monetary relief, including its requests for attorneys' fees, expenses and costs, by way of its Prayers for Relief in the Counterclaims;
- H. That D&D Group be awarded damages pursuant to 35 U.S.C. §284;
- I. That Nationwide be preliminarily and permanently enjoined from infringing U.S. Patent No. 5,584,100;
- J. That D&D Group be awarded its attorneys' fees pursuant to 35

1 U.S.C. §285, along with an award of costs incurred by D&D  
2 Group in defense of the Counterclaims;

3 K. That Nationwide take nothing by way of its Prayers for Relief;  
4 and

5 L. That the Court award any other relief to which D&D Group may  
6 be entitled.

7 Respectfully submitted,

8 FULWIDER PATTON, LLP

9  
10 Dated: May 19, 2008

By: /s/Gary M. Anderson

Gary M. Anderson

Michael J. Moffatt

Jessica Brookhart-Knost

Attorneys for Plaintiffs

D&D GROUP PTY LTD, D D

TECHNOLOGIES PTY LTD. and

D&D TECHNOLOGIES (USA), INC.

**JURY DEMAND**

D&D Group hereby requests a trial by jury on all issues so triable raised by Nationwide's Counterclaims in this action.

Respectfully submitted,

FULWIDER PATTON, LLP

Dated: May 19, 2008

By: /s/Gary M. Anderson

Gary M. Anderson

Michael J. Moffatt

Jessica Brookhart-Knost

Attorneys for Plaintiffs

D&D GROUP PTY LTD, D&D

TECHNOLOGIES PTY LTD. and

D&D TECHNOLOGIES (USA), INC.

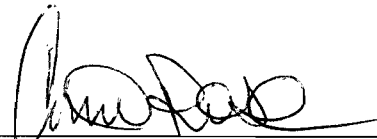


**CERTIFICATE OF SERVICE**

I certify that on **May 19, 2008**, the foregoing **PLAINTIFF AND COUNTERDEFENDANT D&D GROUP PTY LTD'S REPLY TO DEFENDANT'S COUNTERCLAIMS AND JURY DEMAND** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participant(s) e-mail address(es) denoted on the attached Electronic Mail Notice List. For Parties who are not Filing Users, I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participant(s), if any, indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **May 19, 2008**.

  
Carrie Rose

## **Mailing Information for a Case 3:08-cv-00236-WQH-POR**

### **Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

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### **Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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